

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3423 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANAGEMENT/TRUSTEE GONDAL EDUCATION SOCIETY

Versus

DHIRAJBEN MANILAL DAVE

Appearance:

MR HB SHAH for Petitioner
MR BP DALAL for Respondent No. 1
None present for Respondent No. 2
MR HL JANI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/06/97

C.A.V. JUDGEMENT

1. The petitioner, Management/Trustee of the Gondal Education Society, Mahadev Vadi, Opp. Post Office, Gondal, Dist. Rajkot, preferred this Special Civil Application and challenge is made to the order of Gujarat Secondary Education Tribunal at Ahmedabad dated 28th October, 1988 passed in Application No.421/86 to the

extent only where the Tribunal has given the direction that the respondent No.1-teacher shall be considered to be full-time Assistant Teacher in the secondary school of the Trust with effect from 14-6-1983.

2. The facts of the case, in brief, are that the respondent No.1 was appointed as a teacher in the primary school of the petitioner on 28th February, 1979. From the year 1981 to 1983, the respondent No.1 teacher was assigned some periods in the secondary school of the petitioner. It is not in dispute that from 1st June, 1983, the respondent No.1 was assigned 24 periods in secondary school and this arrangement was continued till 31st May, 1987. From 1st June, 1987, the respondent No.1 was appointed as a full-time teacher in the secondary school of the petitioner. So the dispute has been raised by the respondent No.1 claiming the salary of the secondary school teacher for the period from June, 1982 to 13th June, 1983 and then as a full-time teacher of the secondary school from 14th June, 1983. There seems to be some discrepancy in the date in the judgment of the Tribunal and the statement made in the Special Civil Application. It appears that the respondent No.1 was assigned 24 periods in the secondary school from 14th June, 1983. The Tribunal has accepted the grievance of the respondent No.1 and her application was partly allowed. She was declared to be the part-time secondary Assistant Teacher during the period between 14-6-1982 to 13-6-1983 and for this period she was ordered to be paid on the basis of a fixed salary of Rs.245/-p.m.. The further declaration was given that with effect from 14-6-1983 she was a full-time Assistant Teacher in the secondary school and she should be paid the salary in the pay scale of Rs.440-750 together with the allowances prescribed for the secondary teachers. Further direction was given for the consequential benefits to be given to the respondent No.1.

3. This petition has been contested by the respondent No.1 by filing reply to the same.

4. The counsel for the petitioner contended that the Tribunal has exceeded its jurisdiction in confirming the status of the permanent Assistant Teacher in secondary school of the petitioner to the respondent No.1 with effect from 14th June, 1983. Carrying further this contention, the counsel for the petitioner submitted that it is a case where the Management has taken the teaching work from the respondent No.1 in secondary school in addition to his teaching work in the primary school, and as such, at the most she could have been entitled to the

difference of the salary of the two posts and not of the status of the permanent Assistant Teacher in secondary section. She has been appointed as a full-fledged teacher in secondary section from 1-6-1987 and from that date she is entitled for all the benefits and she has been given the same, for which there is no dispute.

5. On the other hand, the counsel for the respondent has contended that when the work has been taken from the respondent No.1 as Assistant Teacher in secondary school she has rightly been given the status of permanent full-time Assistant Teacher in the secondary section from 14th June, 1983 and this Court sitting under Article 227 of the Constitution may not interfere with the order. In support of his contention, the counsel for the respondent No.1 placed reliance on the decision of this Court given in Special Civil Application No.3738/82 decided on 13th October, 1982.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The respondent No.1 was admittedly appointed as a Assistant Teacher in the primary school of the petitioner. It is a case where the management has taken some teaching work from her in the secondary section which was in addition to his own teaching work in the primary section. Merely because the petitioner has taken the teaching work from the respondent No.1 in secondary school, she does not acquire the status of the secondary Assistant Teacher and to the extent of all the benefits on that basis. It is a settled position of law that a temporary Government servant does not become permanent unless he acquires that status or capacity by force of any rule or is declared as permanent servant. Reference in this respect may have to the decision of the Apex Court in the case of M.P.H.S.V.N. vs. Devendra Kumar Jain & Ors. reported in JT 1995 (1) SC 198. Similarly, the Apex Court has held that the adhoc promotee does not acquire the right to hold the post on which he has been adhocly promoted and reference in this respect may have to the decision of the Supreme Court in the case of State of Orissa vs. Prari Mohan Misra reported in JT 1995 (2) SC 54. The Tribunal has taken it to be a case of the respondent No.1 as part-time secondary Assistant Teacher during the period between 14-6-1982 to 13-6-1983, but that decision is not correct. It is not the case of part-time Assistant Teacher in secondary section. While giving this finding the Tribunal has altogether lost the sight of the important fact that the respondent No.1 was a full-time Assistant Teacher in the primary school of

the petitioner, and as such, it has taken from her the teaching work in the secondary section. So even if the petitioner continued to take the teaching work from her in the secondary section for years together, she has not acquired any right to the post of Assistant Teacher in the secondary section. She still continues to be the Assistant Teacher in the primary school. However, it is a case where the additional work has been taken from her, and as such, in addition to what she has been paid the salary for Assistant Teacher in the primary school, she shall certainly be entitled for the pay of the additional teaching which she did in the secondary school for the period in question. The Tribunal has awarded her the basic salary of the Assistant Teacher of secondary school for the period from 14-6-1982 to 13-6-1983 and for which no exception can be taken, and no interference is called for.

8. For the period from 14th June, 1983 till 31st December, 1985 she could have been given the difference of the salary of the two posts i.e. of Assistant Teacher in primary school and Assistant Teacher in secondary section. However, the Tribunal has ordered for the payment of the salary for this period in the pay scale of Assistant Teacher in secondary section to which the counsel for the petitioner has not seriously objected.

9. The order of the Tribunal to the extent of giving the benefit for the additional working of the respondent No.1 does not call for any interference, but confirmation of the status of full-time Assistant Teacher in the secondary school from 14th June, 1983 cannot be allowed to stand.

10. The decision which has been relied upon by the counsel for the respondent also does not fully support the case of the respondent No.1. Though the facts and dispute in that case and in this case are somewhat similar, but in view of the later decision of the Supreme Court on the rights of the temporary and adhoc promotees, reference of which has been made earlier, the case of the respondent No.1 cannot be taken to be on better footing than the temporary appointee or the adhoc promotee. Otherwise also, this Court in that decision has declared the teacher deemed to be a full-time teacher in secondary section from the date of the decision of the Tribunal and not with any retrospective effect. So as per the decision of this Court on which strong reliance has been placed by the counsel for the respondent No.1, the respondent No.1 could have been declared to be the full-time Assistant Teacher in the primary section with

effect from the date of the judgment of the Tribunal or in all the eventualities from the date of the filing of the Application No.421/86 before the Tribunal by her. It will certainly come after 1-6-1987 from which date she has been made full-time Assistant Teacher in the secondary school and has been given all the benefits.

11. This Court has made the order in this Special Civil Application granting ad-interim relief in terms of Para No.10(c) of the petition initially, which order came to be modified on 15th September, 1989. That order reads as under:

Rule. Interim relief to continue on condition that the petitioner deposits in this court the entire amount awarded by the Tribunal within six weeks from today, failing which the interim relief will automatically stand vacated. On such deposit, the amount to be invested in fixed deposits for a period of three years initially.

12. It is not in dispute that in pursuance of the aforesaid order of this Court, the amount has been deposited by the petitioner in this Court and part of which has also been invested in fixed deposits and that deposits have matured. The counsel for the respondent contended that the amount to be deposited has not been properly calculated by the petitioner. This Court has passed the order in C.A. No.37/90 that if there is some dispute regarding calculation etc. then the dispute shall be resolved out at the final stage of the matter. The counsel for the respondent No.1 contended that there is a dispute in calculation of the amount as awarded by the Tribunal, and as such, the dispute should be resolved out by this Court. I do not consider it to be a case where this Court should go on all these issues in a writ of certiorari against the order of the Tribunal. These are the matters to be decided by the District Education Officers concerned.

13. In the result, this Special Civil Application succeeds in part and the order of the Tribunal impugned in this Special Civil Application is set aside to the extent where it declares the respondent No.1 to be the full-time Assistant Teacher in the secondary section of the petitioner with effect from 14-6-1983. The respondent No.1 shall have this status only from 1-6-1987, the date on which she has been appointed as a Assistant Teacher in the secondary school. Otherwise she would have been entitled only from the date of the decision of the Tribunal i.e. 28th October, 1988. The amount which has been deposited by the petitioner in this

Court together with the interest on the amount, which is lying in fixed deposits should be paid to the respondent No.1. The respondent No.1 was present in the Court on the date of the hearing of the matter. The demand draft of the amount be taken in the name of the respondent No.1 and same be sent to the Principal, Vidhya Mandir, High School, Nr. Mahadev Vadi, Opp. Post Office, Gondal, Dist. Rajkot by registered post A.D. and the Principal of the school shall deliver this draft to the respondent No.1. and shall obtain a stamp receipt of the same from her and will send the same to this Court by registered post forthwith. The office shall place the receipt on the file of this case. The draft should be prepared and sent without any further delay. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-